

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ERICA SCOTT,

11 v.  
12 Plaintiff,

13 MULTICARE HEALTH SYSTEM and CHAD  
14 KRILICH, individually,

Defendants.

CASE NO. C18-0063-JCC

ORDER

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16 This matter comes before the Court on Plaintiff's motion for protective order regarding  
17 Defendants' proposed third-party discovery (Dkt. No. 32). Having thoroughly considered the  
18 parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby  
19 GRANTS the motion for the reasons explained herein.

20 **I. BACKGROUND**

21 Plaintiff Erica Scott brings the underlying employment action against Defendants  
22 Multicare Health System and Chad Krilich, alleging that they unlawfully terminated her  
23 employment based on her gender and race and in retaliation for having voiced concerns about  
24 patient safety. (*See generally* Dkt. No. 13.) Defendants assert that Plaintiff's employment was  
25 terminated for legitimate, non-discriminatory reasons, among other defenses. (Dkt. No. 14 at 5–  
26 6.)

1 Plaintiff currently works as a surgeon for Piedmont Healthcare in Atlanta, Georgia. (Dkt.  
2 No. 32 at 3.) During discovery in this case, Plaintiff has provided Defendants with: her  
3 employment contract with Piedmont; Form W-2s from 2015, 2016, and 2017; her Piedmont  
4 paystubs from September 30, 2018 to October 27, 2018; and Piedmont’s annual on-call surgical  
5 schedules for 2018 and 2019. (Dkt. No. 33 at 1.) During her deposition, Plaintiff stated that she  
6 was unaware of any written evaluations of her performance at Piedmont. (Dkt. No. 33-1 at 5.)

7 Following Plaintiff’s deposition, Defendants told Plaintiff that they were seeking  
8 documents in Plaintiff’s Piedmont personnel records “related to write-ups or disciplinary  
9 matters.” (Dkt. No. 33-2 at 6.) After the parties disagreed as to whether the documents were  
10 relevant and discoverable, (*see id.* at 2–5), Defendants notified Plaintiff of their intent to  
11 subpoena Piedmont for documents, including Plaintiff’s performance records. (Dkt. No. 33-4 at  
12 3–4.) In a later email, Defendants stated that documents related to Plaintiff’s performance at  
13 Piedmont “are directly relevant given that Dr. Scott’s theory includes the allegation that she was  
14 written up unfairly at AMC, and therefore we need to determine if her current employer is  
15 writing her up for similar issues, as it would support the fairness of being written up similarly at  
16 AMC.” (Dkt. No. 33-5 at 2.)

17 Plaintiff moves for a protective order prohibiting discovery of documents related to her  
18 performance and disciplinary record with Piedmont, including any subpoena seeking such  
19 documents. (Dkt. No. 32.)

20 **II. DISCUSSION**

21 **A. Legal Standard**

22 The Court may issue a protective order to prevent “annoyance, embarrassment,  
23 oppression, or undue burden or expense” in connection with documents sought in discovery. Fed.  
24 R. Civ. P. 26(c). This includes “forbidding inquiry into certain matters, or limiting the scope of  
25 disclosure or discovery to certain matters . . . .” Fed. R. Civ. P. 26(c)(1)(D). To establish good  
26 cause under Rule 26(c), the movant must show “‘that specific prejudice or harm will result’ if the

1 protective order is not granted.” *In re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d  
2 417, 424 (9th Cir. 2011) (*quoting Foltz v. State Farm Mut. Ins. Co.*, 331 F.3d 1122, 1130 (9th  
3 Cir. 2003)). “Rule 26(c) confers broad discretion on the trial court to decide when a protective  
4 order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*,  
5 467 U.S. 20, 36 (1984).

6 The scope of a subpoena request is coequal with the scope of discovery. *See Fed. R. Civ.*  
7 P. 45(d)(1) advisory committee’s note to 1970 amendment. Courts are required to modify or  
8 quash subpoenas that present an undue burden or require the disclosure of privileged or protected  
9 matter. *Fed. R. Civ. P. 45(d)(3)(A)*.

10 **B. Current Employer’s Personnel Records**

11 As a threshold matter, “[g]enerally, employment records from separate employers are not  
12 discoverable due to their highly private nature absent a specific showing by a defendant as to  
13 their relevance.” *Paananen v. Cellco P’ship*, Case No. C08-1042-RSM, Dkt. No. 25 at 4 (W.D.  
14 Wash. 2009) (*citing Woods v. Fresenius Med. Care Grp. of N.A.*, 2008 WL 151836, slip op. at 1  
15 (S.D. Ind. 2008); *Chamberlain v. Farmington Sav. Bank*, 2007 WL 2786421, slip op. at 1 (D.  
16 Conn. 2007)). Defendants seek Plaintiff’s performance- and disciplinary-related personnel  
17 records from Piedmont, her current employer, asserting that such records would evidence  
18 Defendants’ reasonableness if they show that Piedmont responds similarly to Plaintiff’s  
19 behavior. (*See* Dkt. No. 33-5 at 2, 6, 12.)<sup>1</sup> But Plaintiff’s claims of discrimination and retaliation  
20 concern how Defendants treated her while she was employed at Defendant Multicare Health  
21 System’s Auburn Medical Center in Washington. (*See generally* Dkt. No. 12.) Plaintiff’s  
22 allegations against Defendants have put her employment at Auburn Medical Center at issue, and  
23 do not implicate her performance at Piedmont, whether she has raised similar concerns at  
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26 <sup>1</sup> The Court notes that, although Defendants repeatedly assert that they are not seeking  
the records to show a pattern in Plaintiff’s behavior, Defendants’ arguments appear to contradict  
this position. (*See, e.g.*, Dkt. No. 36 at 2, 6.)

1 Piedmont, or whether Piedmont has disciplined her on the same grounds as Defendants.  
2 Moreover, Defendants have not shown that Piedmont's similar treatment of Plaintiff would  
3 necessarily demonstrate Defendants' reasonableness in this case; conversely, such evidence  
4 could simply show that Plaintiff may have similar claims against her current employer. Finally,  
5 Defendants have not argued that Plaintiff's personnel records from her current employer would  
6 support Defendants' claims that Plaintiff was terminated from Auburn Medical Center for  
7 legitimate, non-discriminatory reasons or overriding reasons. (*See* Dkt. No. 14 at 5 – 6; *see*  
8 generally Dkt. No. 36.) Therefore, Defendants have not made a specific showing of relevance  
9 sufficient to demonstrate that Plaintiff's personnel records at her current employer are  
10 discoverable in this case. *See Paananen*, Case No. C08-1042-RSM, Dkt. No. 25 at 4.

11 Further, Plaintiff has established good cause warranting a protective order restricting  
12 Defendants from seeking Plaintiff's personnel records from her current employer. As discussed  
13 above, Plaintiff has a privacy interest in her employment records at her current employer, and  
14 Defendants have not made a specific showing of relevance outweighing Plaintiff's interest. (Dkt.  
15 No. 32 at 6–9); *see Paananen*, Case No. C08-1042-RSM, Dkt. No. 25 at 4. Plaintiff has also  
16 cited the negative impact that Defendants' proposed subpoena could have on her current  
17 employment at Piedmont. (Dkt. No. 32 at 9) (citing *Warnke v. CVS Corp.*, 265 F.R.D. 64, 69  
18 (E.D.N.Y. 2010); *Graham v. Casey's Gen. Stores*, 206 F.R.D. 251, 256 (S.D. Ind. 2002)).  
19 Plaintiff's privacy interest in her employment records and the negative impact of a third-party  
20 subpoena on her current employment constitute good cause meriting entry of a protective order,  
21 especially considering Defendants' failure to make a specific showing of relevancy as to the  
22 records they seek. *See* Fed. R. Civ. P. 26(c).

23 **III. CONCLUSION**

24 For the foregoing reasons, Plaintiff's motion for protective order regarding Defendants'  
25 proposed third-party discovery (Dkt. No. 32) is GRANTED. Defendants shall not issue a third-  
26 party subpoena or otherwise seek discovery of Plaintiff's current performance- and disciplinary-

1 related documents from Plaintiff's current employer.

2 DATED this 10th day of April 2019.

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John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE

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